

STATE OF MICHIGAN
COURT OF APPEALS

In re ELIZABETH DOLL TRUST.

TERESA DOLL-BODINE,

Appellant,

v

PATRICIA D. HARRIS and CONNIE HARRIS,

Appellees.

UNPUBLISHED

October 16, 2018

No. 341788

Chippewa Probate Court

LC No. 17-027484-TV

Before: MURPHY, P.J., and SAWYER and SWARTZLE, JJ.

PER CURIAM.

Appellant, a beneficiary of the subject trust, appeals by right the probate court's order dismissing her petition for instruction. The probate court determined that it lacked jurisdiction to hear the petition because the situs of the trust had been transferred to Florida; accordingly, the court granted summary disposition in favor of appellees, co-trustees of the trust, under MCR 2.116(C)(4) (lack of subject-matter jurisdiction). We affirm.

I. FACTS

In 2001, Elizabeth Doll created the Elizabeth Doll Trust. Doll named her daughters, appellees Patricia Harris and Connie Harris, co-successors. In 2004, Doll executed a durable power of attorney for finances and named Patricia as her agent. In 2013, Patricia, as agent for Doll, resigned Doll as trustee of the Elizabeth Doll Trust and assumed duties as co-successor trustee of the trust with Connie. Later that year, Doll attempted to revoke the resignation and reinstate herself as trustee; however, her resignation from the Trust had already been effectuated through her power of attorney with Patricia, and she was unable to change the Trust agreement. Doll died in 2014.

In January 2015, Patricia gave written notice to beneficiaries of the Trust that she was changing the situs of the Trust from Michigan to Florida. Appellant apparently received the notice, and sent an objection to the situs change, but sent it to the wrong address. Patricia represents that she did not receive appellant's objection. The record indicates that no other

beneficiary objected to the transfer. The Trust has been continuously administered in Florida by Patricia since 2015.

In 2017, appellant filed a petition to remove Patricia as trustee of the Elizabeth Doll Trust. Appellees moved for summary disposition, arguing that the probate court did not have subject-matter jurisdiction to hear appellant's petition because the Trust's situs was in Florida. After reviewing the Trust agreement and Patricia's 2015 notice of the situs change, the court ruled that it indeed lacked jurisdiction to hear appellant's petition because Patricia had the authority to transfer the situs of the Trust at her discretion.

II. ANALYSIS

The probate court properly determined that it was without jurisdiction to hear appellant's petition for instruction challenging the administration of the Elizabeth Doll Trust.

"[W]hether a court has subject-matter jurisdiction is a question of law reviewed de novo." *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 278; 931 NW2d 204 (2013). This Court "review[s] de novo the proper interpretation of a trust." *In re Estate of Stan*, 301 Mich App 435, 442; 839 NW2d 498 (2013). Issues of statutory interpretation are also reviewed de novo. *Id.*

MCR 2.116(C)(4) provides that a court should grant summary disposition to a moving party if the court lacks subject-matter jurisdiction to hear a matter. "Subject matter jurisdiction in particular is defined as the court's ability to exercise judicial authority over that class of cases; not the particular case before it but rather the abstract power to try a case of the kind or character of the one pending." *Campbell v St John Hosp*, 434 Mich 608, 613-614; 455 NW2d 695 (1990) (quotation marks and citation omitted). "When a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void." *Fox v Bd of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965). The plaintiff bears the burden of establishing subject-matter jurisdiction. *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997).

"Probate courts are courts of limited jurisdiction. Const 1963, art 6, § 15. The jurisdiction of the probate court is defined entirely by statute." *In re Wirsing*, 456 Mich 467, 472; 573 NW2d 51 (1998).

MCL 700.7203(1) grants Michigan probate courts broad and exclusive jurisdiction over "proceedings in this state brought by a trustee or beneficiary that concern the administration of a trust" However, MCL 700.7205(1) provides:

If a party objects, the court shall not entertain a proceeding under section 7203 that involves a trust that is registered *or that has its principal place of administration in another state*, unless either of the following applies:

(a) All appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration.

(b) The interests of justice would otherwise be seriously impaired. [Emphasis added.]

The Trust agreement indicates that the Trust is not registered in any state. MCL 700.7209(1) provides:

The trustee of a trust that has its principal place of administration in this state may register the trust in the court at the place designated in the terms of the trust or, if none is designated, then at the principal place of administration. For purposes of this article, the principal place of the trust's administration is the trustee's usual place of business where the records pertaining to the trust are kept or the trustee's residence if the trustee does not have such a place of business. For a corporate trustee, the usual place of business is the business location of the primary trust officer for the trust.

Appellant asserts that because Patricia improperly notified beneficiaries of her transfer of the principal place of administration of the Trust to Florida in 2015, the transfer of situs did not occur, and the probate court therefore improperly concluded that it did not have jurisdiction to hear her petition for instruction. Appellant contends that Patricia was required to comply with the Michigan Trust Code, MCL 700.7101 *et seq.*, and specifically MCL 700.7108(3)-(5), which provide:

(3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee . . . may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(4) The trustee shall notify the qualified trust beneficiaries in writing of a proposed transfer of a trust's principal place of administration not less than 63 days before initiating the transfer. The notice of proposed transfer shall include all of the following:

(a) The name of the jurisdiction to which the principal place of administration is to be transferred.

(b) The address and telephone number at the new location at which the trustee can be contacted.

(c) An explanation of the reasons for the proposed transfer.

(d) The date on which the proposed transfer is anticipated to occur.

(e) In a conspicuous manner, the date, not less than 63 days after the giving of the notice, by which a qualified trust beneficiary must notify the trustee in writing of an objection to the proposed transfer.

(5) The authority of a trustee under this section to transfer a trust's principal place of administration without the approval of the court terminates if a qualified trust beneficiary notifies the trustee in writing of an objection to the proposed transfer on or before the date specified in the notice.

Appellees argue that compliance with these requirements was not required, because the Trust agreement explicitly provides that they have the authority, in their sole discretion, to change the principal place of administration of the Trust. Section 8.9 of the Trust agreement provides, in relevant part:

8.9 Situs of Trust, Michigan Law Controls, and Exemption from Registration: This trust shall not be subject to the registration requirement imposed by any State and shall be administered free from the active supervision of any court. Trustee is directed to take any and all action, if any, necessary to exempt the Trust from registration. Michigan law shall be applied to interpret this document and the situs of this Trust shall be in Michigan, *provided however, Trustee may change the situs and governing state law in Trustee's sole discretion.* [Emphasis added.]

As appellees note, the requirements of MCL 700.7108(3) and (5), governing a transfer of the principal place of administration of a trust, apply only if a trust is silent as to how a trustee may change the principal place of administration of the trust. MCL 700.7105(1) provides, “*Except as otherwise provided in the terms of the trust,*” the Michigan Trust Code “governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a trust beneficiary.” (Emphasis added.) MCL 700.7105(2) further provides that, with certain enumerated exceptions that do not apply in this case, “[t]he *terms of a trust prevail* over any provision of this article” (Emphasis added.) “When interpreting the meaning of a trust, this Court must ascertain and abide by the intent of the settlor. We must look to the words of the trust itself.” *In re Perry Trust*, 299 Mich App 525, 530; 831 NW2d 251 (2013). “The intent of the settler is to be carried out as nearly as possible.” *Stan Estate*, 301 Mich App at 442 (quotation marks and citation omitted).

Because the Trust agreement governs the change of situs, the probate court was correct to conclude that Patricia was not required to provide the Trust’s beneficiaries notice of her intent to move the Trust’s situs in accordance with the Michigan Trust Code. Appellees were empowered by the Trust agreement to change the principal place of administration of the trust to Florida at their sole discretion. Because the proceeding involved a trust “that has its principal place of administration in another state,” the probate court properly concluded that it could “not entertain” the proceeding and dismissed appellant’s petition for instruction. MCL 700.7205(1).

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Brock A. Swartzle